IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 53 OF 2006

Mr. P.K. Mishra ... Petitioner

Versus

Oil & Natural Gas Corporation Ltd. and Ors. ... Respondents

Mr. N. Engineer with Ms.Nita Madhawani for Petitioner.

Ms. Manisha Chowdhari i/by Ms. Shalini Rajput for R. Nos. 1 to 5.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: DECEMBER 05, 2006

P.C.:

. Rule. Heard forthwith.

. The Respondent Corporation has been given sufficient time to file reply. The last opportunity was given on 21.11.2006. Inspite of that, when the petition came up for hearing today, no reply has been filed.

. The issue is limited. The enquiry was commenced against the Petitioner and during the pendency of the enquiry Petitioner was under suspension and has been paid subsistence allowance. At the conclusion of the enquiry, punishment was imposed of censure by order dated 26.3.2002. In so far as period of suspension is concerned, following order was passed

:

> " The period of suspension from 16.04.1996 to 28.05.98 will be treated as on duty."

. This order is passed by the Disciplinary Authority.

. In spite of that order, another order came to be passed on 25.8.2004. The relevant portion of which reads as under :

> "Since the officer has not been exonerated and has been imposed punishment of "Censure" period of leave cannot be treated as the period spent on duty."

. The respondents have their Conduct, Discipline and Appeal Rules, 1994. Rule 33(7) Reads as under :

> "Leave shall not be granted to an employee under suspension."

The leave which the respondents are holding as not to be treated on duty is purported leave during the period of suspension. As noted earlier, there can be no leave during the period of suspension. The settled law is that the relationship of employer and

employee has been terminated and the employees will be only entitled to subsistence wages during the said period.

. The learned counsel points out that when the Petitioner was under suspension, he had left the head quarter and on account of that the said order came to be passed.

. Once the Disciplinary Authority passed order on 26.3.2002 that would be application of mind on the part of the Disciplinary Authority and the question of passing any further order would not arise. Consequently, we find the order dated 25.8.2002 is without jurisdiction and liable to be quashed and set aside.

. The Petitioner has also prayed that he be promoted from 1.1.1996. The respondents in reply by their communication on 28.05.2002 brought to the notice of the Petitioner the Office Order No.17(11)/02-EP dated 8.4.2003 under which on the punishment of censure being imposed, the Petitioner would not be eligible for consideration untill 1.1.2003.

. In the light of that the following Order :

(1) The respondents to consider the case of the Petitioner for promotion with effect from 1.1.2003 by following due procedure.

(2) The order dated 25.8.2004 holding the period of leave cannot be treated as period spent on duty, is quashed and set aside. The respondents are directed to release all unpaid wages and allowances to which the Petitioner was entitled to during the said period, within 20 weeks from today.

. Rule made absolute accordingly. No order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**